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February 13, 2020

VIA ECF AND FIRST-CLASS MAIL
Honorable Brian R. Martinotti, U.S.D.J.
U.S. District Court for the District of New Jersey
Martin Luther King Jr. Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: *Adapt Pharma Operations Ltd., et al. v. Teva Pharms. USA, Inc., et al.*, Civil Action No.: 2:16-cv-07721 (BRM) (JAD) (Consolidated)

Dear Judge Martinotti:

This firm, together with Sterne, Kessler, Goldstein, & Fox, P.L.L.C., represents the defendants ("Teva") in the above-referenced matter. We write in response to Your Honor's text order of January 29 setting summations for February 26 and allotting each side 90 minutes in which to present argument. Teva respectfully requests permission to reserve a portion of its argument time to be used in rebuttal after the plaintiffs (collectively, "Adapt") have completed their summation.

Counsel for Teva has conferred with counsel for Adapt and is advised that Adapt does not consent to the requested reservation of time for rebuttal. In view of the burden that Teva is tasked with meeting, Teva respectfully submits that it would be most fair to permit Teva to respond to whatever points Adapt raises in closing. For that reason, Teva respectfully requests permission to reserve up to 30 minutes, or such time as the Court thinks appropriate, for rebuttal summation.

As Your Honor is aware, Teva has the burden of proving the patents invalid by clear and convincing evidence. It is customary for the party with the burden of proof not only to go first in summation but also to have the last word in the case on rebuttal. This District has long recognized not only that "[t] he party with the burden of proof is entitled to open and close the argument" but also, specifically, that "[i]n a trial of patent validity, bearing the burden of proof entitles a defendant to present first and last with regard to that issue." *Novartis Pharmeceuticals Corp. v. Teva Pharmeceuticals USA, Inc.*, No. 05-CV-1887-DMC, 2009 WL 3334850, at *1 (D.N.J. Oct. 14, 2009); *see also, e.g.*, *Moylan v. Meadow Club, Inc.*, 979 F.2d 1246, 1251 (7th Cir. 1992) ("It is customary for the party bearing the burden of proof to open and close the argument"); Peter s. Menell, *Patent Case* 8-15 (Federal Judicial Center, 3d ed. 2016) ("Closing arguments should be

structured similarly to the order of trial presentation. It is customary for the party with the burden of proof to open and close the arguments.").

We thank the Court for its consideration of the attached and are available should Your Honor or your staff have any questions or need anything further.

Respectfully submitted,

s/ Liza M. Walsh

Liza M. Walsh

cc: All Counsel of Record (via ECF and Email)

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